

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
COUNTY OF MORGAN)	FCC File No. 0002515820
)	
Request for Waiver of Section 90.20(13))	
of the Commission's Rules)	

ORDER

Adopted: October 5, 2006

Released: October 6, 2006

By the Deputy Bureau Chief, Chief of Policy Division, Public Safety and Homeland Security Bureau:

1. *Introduction.* We have before us an application and waiver request filed by the County of Morgan, Tennessee (Morgan).¹ Morgan requests a waiver of Section 90.20(13) of the Commission's Rules² to allow the frequency 152.0075 MHz as a repeater output frequency in a communications system used to support emergency medical service (EMS) in the county.³ For the reasons discussed herein, we deny Morgan's waiver request.

2. *Background.* Morgan currently is licensed for two VHF frequencies under the call sign KNGD349. According to Morgan, it uses its current radio system to support the provision of EMS to residents of Morgan County. It appears that Morgan wants to upgrade its communication system by adding a mobile relay (repeater) station. Morgan states that it has to use VHF frequencies and that the only VHF frequency it can use without causing destructive interference to co- and adjacent channel licensees is the frequency 152.0075 MHz.⁴ This frequency, however, is reserved for paging operations.⁵ Accordingly, Morgan seeks a waiver of Section 90.20(13) of the Commission's Rules to allow the frequency to be used in a base/mobile communication system.

3. *Discussion.* We may grant a request for rule waiver when (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁷

¹ FCC File No. 0002515820 and accompanying waiver request (Waiver).

² 47 C.F.R. § 90.20(13).

³ The frequency would be the transmit frequency for a mobile relay (FB2) station.

⁴ Waiver at 1.

⁵ See 47 C.F.R. § 90.20.

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

4. We do not find that Morgan has demonstrated that waiver of Section 90.20(13) of the Commission's Rules is warranted based on the information presented.⁸ Morgan fails to provide any support for its assertion that no other VHF frequencies are available. For example, Morgan provided no technical study or any statement from a recognized frequency coordinator demonstrating that there are no other VHF frequencies available. We find that Morgan's statement alone -- without empirical data to support the assertion -- to be unpersuasive and not sufficient to satisfy the high hurdle articulated in *WAIT Radio*.⁹ Further, the frequency 152.0075 MHz is available for Federal Government paging use under Section 2.106, footnote US216.¹⁰ Thus, a waiver of this rule for the proposed use of this frequency also would be needed. Morgan provides no support for such a waiver.

5. We further note that Morgan's application also requests the frequency 157.450 MHz for mobile operations. This frequency is also reserved for paging operations under the rules (*i.e.*, it carries the same limitation (13) as the frequency 152.0075).¹¹ There is nothing in Morgan's waiver request addressing the need for waiver to permit the proposed mobile use of the frequency 157.450 MHz.

6. Finally, we note that Morgan has not demonstrated any unique or unusual factual circumstances that would warrant grant of a waiver.¹² While we recognize the potential benefits a mobile relay system can offer, Morgan has not provided any basis to distinguish itself from any other similarly situated public safety entities seeking to enhance communications capabilities. Further, Morgan has not shown that application of the rules in this case would be inequitable, unduly burdensome, or contrary to the public interest.

7. *Conclusion.* We find that Morgan has not satisfied the Commission's waiver criteria in support of its request for waiver in connection with its proposal to modify the facilities for Station KNGD349. Thus, based on the record currently before us, we deny the waiver request and dismiss the application without prejudice to Morgan's re-filing its request consistent with the Commission's technical rules and waiver criteria.

8. Accordingly, IT IS ORDERED that pursuant to section 4(i) of the Communications Act of 1934, 47 U.S.C. § 154(i), and section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the Request for Waiver filed by the County of Morgan, IS DENIED, and application FCC File No. 0002515820 SHALL BE DISMISSED consistent with this *Order*.

⁸ See Application of School Board of Dade County, *Memorandum Opinion and Order*, 18 FCC Rcd 24047 (Chief, PSPWD, WTB 2003) (*Dade County*) (finding no sufficient reasons to support the waiver request); Request of Skytel Communications, Inc., *Order*, 16 FCC Rcd 12349 (CWD, WTB 2001) (failing to provide support that there is no possibility of harmful interference).

⁹ See *supra* note 7. See also City of Emeryville, *Order*, 19 FCC Rcd 6152 (Chief, PSCID, WTB 2004).

¹⁰ 47 C.F.R. § 2.106.

¹¹ See 47 C.F.R. § 90.20.

¹² See *Dade County*, *supra* note 8.

9. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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